(5) (7) (5)

Supreme Court, U.S.
FILED
MAY 25 1988
JOSEPH F. SPANIOL, JR.
CLERK

Nos. 87-205, 87-206 and 87-371

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1987

ALASKA MINERS ASSOCIATION, PETITIONER

v.

TRUSTEES FOR ALASKA, ET AL.

STATE OF ALASKA, PETITIONER

v.

TRUSTEES FOR ALASKA, ET AL.

TRUSTEES FOR ALASKA, ET AL.,
CROSS-PETITIONERS

v.

STATE OF ALASKA, ET AL.

ON PETITIONS FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF ALASKA

SUPPLEMENTAL BRIEF FOR ALASKA MINERS ASSOCIATION IN RESPONSE TO THE VIEWS OF THE SOLICITOR GENERAL

James N. Reeves
(Counsel of Record)
Blythe W. Marston
BOGLE & GATES
1031 W. 4th, #600
Anchorage, AK 99501
(907) 276-4557

19P

Nos. 87-205, 87-206 and 87-371

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1987

ALASKA MINERS ASSOCIATION, PETITIONER

v.

TRUSTEES FOR ALASKA, ET AL.

STATE OF ALASKA, PETITIONER

v.

TRUSTEES FOR ALASKA, ET AL.

TRUSTEES FOR ALASKA, ET AL.,
CROSS-PETITIONERS

v.

STATE OF ALASKA, ET AL.

ON PETITIONS FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF ALASKA

SUPPLEMENTAL BRIEF FOR ALASKA MINERS ASSOCIATION IN RESPONSE TO THE VIEWS OF THE SOLICITOR GENERAL

James N. Reeves
(Counsel of Record)
Blythe W. Marston
BOGLE & GATES
1031 W. 4th, #600
Anchorage, AK 99501
(907) 276-4557

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES.....ii

MISCELLANEOUS.....iii

I. THE EXISTENCE OF A QUESTION ABOUT WHETHER THIS COURT HAS JURISDICTION TO ENTERTAIN THE PETITIONS OR CROSS-PETITION FOR CERTIORARI ITSELF PROVIDES A FURTHER REASON WHY THIS COURT SHOULD GRANT CERTIORARI.....2

II. WHETHER SECTION 6(i) PRECLUDES A PRIVATE ACTION FILED IN STATE COURT TO DETERMINE THE VALIDITY OF THE STATE'S MINING LAWS IS AN ISSUE WORTHY OF REVIEW BY THIS COURT.....5

III. and IV. ALTHOUGH THE SOLICITOR GENERAL'S INTERPRETATION OF SECTION 6(i) IS WRONG ON THE MERITS, HIS RAISING OF THE ARGUMENTS UNDERSCORES THE IMPORTANCE OF THIS CASE AND ITS NEED FOR REVIEW.....13

TABLE OF AUTHORITIES

Cases	Page
Barnes v. Kline, 759 F.2d 21 (D.C. Cir. 1985) (Bork, J. judgment vacated sub nom., Burk v. Barnes, 479 U.S. 361 (1987)	4
Davis v. Passman, 442 U.S. 228 (1979)	9
International Paper Company v. Ouellette, ___ U.S. ___, 107 S. Ct. 805 (1987)	10

MISCELLANEOUS

Page

Laurence H. Tribe, American Constitutional Law (2d Ed. 1988)...4

P. Bator, et al., Hart and Wechsler's, The Federal Courts and the Federal System, (2d Ed. 1973).....4

By way of this Supplemental Brief the Alaska Miners Association, Petitioner in No. 87-205, submits its response to the Brief submitted by the Solicitor General for the United States as Amicus Curiae. The Solicitor General asserts the following:

1. This Court does not have jurisdiction to entertain the petitions or cross-petition for writ of certiorari because respondents do not satisfy the standing requirement of Article III of the U.S. Constitution.

2. The Supreme Court of Alaska correctly held that Section 6(i) of the Alaska Statehood Act does not preclude Alaska courts from entertaining a private action seeking declaratory judgment on the validity of the State's mining laws.

3. The Alaska Supreme Court was correct in holding that:

a. the State's mining law is not a leasing system;

b. the "lease" provision in Section 6(i) requires the payment of at least some rents or royalties for the extraction of minerals; and

c. the State's mining laws fail to require such payment.

4. The Alaska Supreme Court erred in limiting the lease requirement in Section 6(i) to lands that were known to be mineral in character when they were selected by the State.

The following discussion analyzes each assertion.

I

The existence of a question about whether this Court has jurisdiction to entertain the petitions or cross-petition for certiorari itself provides a further reason why this Court should grant certiorari.

The Alaska Miners Association agrees with the Solicitor General and the State

of Alaska that respondent private parties have no more than generalized grievances about the conduct of government and, therefore, would have no Article III standing to bring this case in federal court. S. G. 14-15, and State of Alaska Supplemental Brief 17. The Alaska Supreme Court, however, found that the respondents' status as citizens[1] gives respondents a sufficient derivative interest or stake in the performance of state governmental functions that they have standing in state court.

The Solicitor General asserts that, although state courts are not barred by the federal constitution from employing such a theory of standing, this Court has consistently held that, when standing is

---

[1]In his argument the Solicitor General erroneously assumes that respondents are state taxpayers. Alaskans do not pay personal income taxes to the State.

based on nothing more than an interest in the conduct of government, an individual does not meet the standing requirements of Article III. S. G. at 14. The Solicitor General thus concludes that the Court should deny the petition for certiorari.

In so arguing, the Solicitor General elides the issue that makes this case worthy of certiorari. This Court has not yet decided whether, when a state court invalidates a state law based upon the application of a federal law, the state court plaintiff's lack of Article III "injury-in-fact" will bar the nonprevailing party (typically, the state government) from seeking review in the United States Supreme Court.[2] If the

---

[2] See, Laurence H. Tribe, American Constitutional Law, 113-114 and n. 20 (2d Ed. 1988); P. Bator, et al., Hart and Wechsler's, The Federal Courts and the Federal System, 161, 181 (2d Ed. 1973), and Barnes v. Kline, 759 F.2d 21, 63 n. 16 (D.C. Cir. 1985) (Bork, J. dissenting), (continued)

Court fails to resolve this issue, it consigns a spectrum of important cases to a limbo in which reviewability by this Court will remain uncertain. Thus, the question of whether this Court has jurisdiction to hear this case does not provide a ground for denial of the petition for certiorari, but instead reinforces the petitions by providing an additional and independent reason for granting review.

II

Whether Section 6(i) precludes a private action filed in state court to determine the validity of the state's mining laws is an issue worthy of review by this Court.

Although the Solicitor General agrees that a private cause of action would not be properly implied in federal court to enforce Section 6(i), S. G. 17-18, he nonetheless concludes that a state court

---

judgment vacated sub nom., Burk v. Barnes, 479 U.S. 361 (1987).

is free to imply such a cause of action. These petitions for certiorari raise precisely that issue: whether a state court can imply a private cause of action under federal law when a federal court would not similarly imply a private right of action. It is an issue of first impression for this Court, and for that reason, the petition for certiorari should be granted.

The Solicitor General, however, asserts that this case should be construed as a state cause of action for relief by citizens of Alaska "injured" by the State's violation of federal law. S. G. 18. The Solicitor General suggests that it is not unusual for a state court to construe federal law when it is an element of a state-created cause of action. In this case, however, the Alaska Supreme Court stated in unequivocal terms

that it was ruling directly upon federal law:

> Appellants' state constitutional and public trust theories depend on the meaning of the grant and restrictions of Section 6(i). Since Section 6(i) directly controls, we have no occasion to examine these theories further.

86-206 Petitioner's Appendix B85 ("Pet. App."). Unlike the cases cited by the Solicitor General, S. G. 19-20, this case involves no state cause of action independent of that federal statute. Rather, the Alaska Supreme Court has given private parties a "direct" statutory enforcement action in state court. Thus, this Court is squarely faced with the issue of whether a state court can imply a private cause of action under federal law when a federal court would not similarly imply a private right of action.

Under the theory that the claims asserted in this case are state claims, the Solicitor General raises three

principal reasons why the Alaska Supreme Court's holding that a private right of action exists under Section 6(i) is correct on the merits.[3] The three reasons are preemption, res judicata and lack of federal resources to monitor Section 6(i). As discussed above, the Alaska Miners Association asserts that the Solicitor General has mischaracterized the claims asserted by the plaintiffs as causes of action under state law only. Nonetheless, for purposes of rebuttal the Alaska Miners Association discusses briefly each of the three arguments on the merits. The Solicitor General asserts

---

[3]The three reasons raised by the Solicitor General do not address the "certworthiness" of this case, but rather are directed at the merits. The Solicitor General's repeated discussion of the merits, rather than the certworthiness of the case is further support that the issues raised by this case are of sufficient importance to warrant review by this Court.

that preemption is the "relevant issue." S. G. 20. His preemption analysis is erroneous. The Solicitor General's concession that no implied private right of action under Section 6(i) exists in federal court should be dispositive: federal legislation which excludes private enforcement in federal court surely must preempt any private enforcement in state court.[4] As the Solicitor of the United States Department of the Interior points out, "[i]n essence, the government's current exercise of prosecutorial discussion will have been preempted by the Alaska Supreme Court without any

---

[4]In Davis v. Passman, 442 U.S. 228, 239 (1979), this Court stated, "[i]t is entirely appropriate for Congress in creating . . . rights and obligations, to determine . . . who may enforce them and in what manner." Id. at 241. Section 6(i) makes a "textually demonstrable commitment," Id. at 242, of enforcement authority and that commitment is solely to the United States Attorney General in federal court.

participation of the United States." State of Alaska, Supplemental Brief Appendix 13 ("App."). The language of Section 6(i) makes it clear that Congress intended to "occupy the field" with regard to enforcement of Section 6(i). A private enforcement action in state court interferes with that scheme. See, International Paper Company v. Ouellette, ___ U.S. ___, 107 S. Ct. 805, 811-814 (1987).

The Solicitor General also takes the view that a state court decision would have no res judicata effect upon federal courts considering a forfeiture action brought by the Attorney General. S. G. 16-17. That view will engender serious confusion in the interpretation of the federal statute and the stewardship of federal land interests retained by the United States under that statute. The Alaska Superior Court and the Solicitor of

the Department of the Interior have already concluded that the state laws comply with the Section 6(i) leasing condition (Pet. App. A9-A12; App. 5-10), while the Alaska Supreme Court and the Solicitor General have concluded otherwise. Pet. App. B51-B71; S. G. 24-84. The Solicitor General's views can hardly be taken as an authoritative pronouncement of the federal government, especially in light of his recognition that the Alaska Supreme Court's decision is "purely advisory." Such confusion leaves federal agencies and the Alaska state executive and legislative branches in an untenable position.

Finally, the Solicitor General asserts that,

> [t]he Attorney General does not have the resources to monitor the administration and deposition of millions of acres of land that were granted the State. Suits by private parties and beneficiaries of the trust can furnish the

> important means for ensuring that the limitations imposed by Congress are respected.

S. G. 23. The Alaska Miners Association concurs with the State of Alaska that these assertions should be rejected for a variety of reasons. First, the decision to imply a private cause of action is always based on a claim that it would benefit overall enforcement. That has not prevented this Court from ruling in many cases that Congressional enactments do not permit private enforcement. Second, the absence of a forfeiture suit is not due to any lack of federal resources, but rather to the judgment by the Interior Department that there was in fact no violation of the leasing condition. See, Solicitor Tarr's Opinion, App. 5-10. Third, Section 6(i) contains no trust language that in any way restricts the State's use of mineral revenues from lands received under the

Section 6 land grants. See, State of Alaska Supplemental Brief 13-14.

III and IV

Although the Solicitor General's interpretation of Section 6(i) is wrong on the merits, his raising of the arguments underscores the importance of this case and its need for review.

The Solicitor General makes several additional arguments directed at the merits of the Alaska Supreme Court's interpretation of Section 6(i). S. G. 24-30. These arguments need not be addressed in determining whether to grant the petitions for certiorari, but they do suggest the importance of the issues and the need for a conclusive determination of the issue by this Court. The Alaska Miners Association does not address the merits in this supplemental brief, except to note (1) that the Solicitor General incorrectly construes the language of Section 6(i) of the Alaska Statehood Act, see State of Alaska Supplemental Brief 2,

and (2) the issues decided by the Alaska Supreme Court are sufficiently important that they provide an independent reason for review of the case. See, Alaska Miners Association petition for certiorari at 12-13.

Conclusion

The petitions for a writ of certiorari should be granted.

Respectfully submitted this 24th day of May, 1988.

BOGLE & GATES
Attorneys for Alaska Miners Association

By _____
James N. Reeves
Blythe W. Marston